

MARK POE (S.B. #223714)
mpoe@gawpoe.com
RANDOLPH GAW (S.B. #223718)
rgaw@gawpoe.com
GAW | POE LLP
4 Embarcadero, Suite 1400
San Francisco, CA 94111
Telephone: (415) 766-7451
Facsimile: (415) 737-0642

Attorneys for Plaintiffs ABC Distributing, Inc. and
Pittsburg Wholesale Grocers, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABC DISTRIBUTING, INC., and
PITTSBURG WHOLESALE GROCERS,
INC.,

Plaintiffs,

v.

LIVING ESSENTIALS, LLC and
INNOVATION VENTURES, LLC

Defendant.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs ABC Distributing, Inc. and Pittsburg Wholesale Grocers, Inc. (together,
“Plaintiffs”) hereby make the following allegations:

PARTIES

1. Plaintiff ABC Distributing, Inc. (“ABC”) is a California corporation with its principal place of business in Los Angeles County, California.
2. Plaintiff Pittsburg Wholesale Grocers, Inc. (“PITCO”) is a California corporation with its principal place of business in Santa Clara County, California.
3. Defendants Living Essentials, LLC and Innovation Ventures, LLC (together, “LIVING ESSENTIALS”) are Michigan limited-liability companies with their principal place of

1 business in Oakland County, Michigan. Living Essentials, LLC is the manufacturer and
2 distributor of 5-Hour Energy®, and Innovation Ventures, LLC is its corporate parent.

3 **JURISDICTIONAL STATEMENT**

4 4. The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because
5 Plaintiffs and LIVING ESSENTIALS are citizens of different states, and the amount in
6 controversy exceeds \$75,000.

7 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial
8 part of the events giving rise to the claim occurred in this district. Specifically, PITCO is
9 headquartered in San Jose, California.

10 **INTRADISTRICT ASSIGNMENT**

11 6. A substantial part of PITCO's negotiations for and purchase of 5-Hour Energy®
12 were carried out from its headquarters in San Jose, California.

13 **FACTUAL ALLEGATIONS**

14 **Plaintiffs' Wholesale Businesses**

15 7. ABC is a wholesale food distribution company operating in Los Angeles County.
16 It has been in business since January 15, 2013.

17 8. ABC purchases large volumes of food, beverages, and consumer products that the
18 average consumer would see on the shelves of local convenience stores and markets. Small,
19 independent wholesalers or retailers in the southern California region shop at ABC's warehouse
20 and purchase goods for resale.

21 9. PITCO is a wholesale food distribution company that has been in business for
22 thirty years, serving independent stores in northern California from Napa to the Fresno and
23 Bakersfield area. Its customers are small, locally-owned businesses such as other wholesalers,
24 convenience stores, gas stations, Hispanic grocery stores and bodegas. Such stores are often
25 passed over by larger vendors and struggle to compete with large "big box" retailers.

26 10. PITCO supplies all kinds of items that can be found at small grocery stores: food,
27 beverages, health and beauty items, liquor, cigarettes and toys.

28

11. PITCO's corporate operations are carried out from its corporate headquarters in San Jose, California. There, its purchasing agents negotiate the price and quantity of the products that PITCO buys from its vendors for re-sale to its customers.

The 5-Hour Energy® Product

12. 5-Hour Energy® is a popular dietary supplement that has been manufactured and sold by LIVING ESSENTIALS since 2004. 5-Hour Energy® is sold as a liquid in 1.93-ounce bottles at more than 100,000 retail locations in the United States.

13. LIVING ESSENTIALS sells 5-Hour Energy® to wholesalers in a package of twelve (12) bottles (referred to as a "twelve-pack"). A typical sales arrangement for LIVING ESSENTIALS was for it to sell "master cases" of 5-Hour Energy®, which were sealed boxes each containing eighteen (18) twelve-packs of 5-Hour Energy®.

14. Plaintiffs purchased twelve-packs and master cases of 5-Hour Energy® from LIVING ESSENTIALS for re-sale to retailers or other wholesalers.

15. Chain-store retailers are able to undercut Plaintiffs prices for twelve-packs of 5-Hour Energy® because LIVING ESSENTIALS charges them unfairly high prices in comparison to the prices it charges those other stores.

16. Plaintiffs lost sales of 5-Hour Energy® to those competitors, or made less profit from existing sales, because their customers preferred to purchase goods at the lowest prices possible.

FIRST CLAIM FOR RELIEF

(California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200)

17. Plaintiffs hereby re-incorporate and re-allege paragraphs all the preceding paragraphs as if fully set forth herein.

18. LIVING ESSENTIALS' actions constitute unlawful and unfair conduct within the meaning of California's unfair competition law.

19. Plaintiffs are entitled to restitution and injunctive relief under California's unfair competition law.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment / Quasi-Contract / Restitution)

20. Plaintiffs hereby re-incorporate and re-allege paragraphs all the preceding paragraphs as if fully set forth herein.

21. LIVING ESSENTIALS has received a financial benefit from Plaintiffs that it is unjust for LIVING ESSENTIALS to retain.

PRAYER

WHEREFORE, Plaintiffs ABC Distributing, Inc. and Pittsburg Wholesale Grocers, Inc. pray for judgment as follows:

1. For judgment against defendants Living Essentials, LLC and Innovation Ventures, LLC;
2. For restitution;
3. For preliminary and permanent injunctive relief;
4. For costs; and
5. For such other and further relief as the Court deems just and proper.

Dated: May 7, 2015

GAW | POE LLP

By: 

Mark Poe
Attorneys for Plaintiffs ABC
Distributing, Inc. and Pittsburg
Wholesale Grocers, Inc.

1 Plaintiffs hereby demand a jury trial for their claims against defendants Living Essentials,
2 LLC, and Innovation Ventures, LLC.

3
4 Dated: May 7, 2015

GAW | POE LLP

5
6 By: 

7 Mark Poe
8 Attorneys for ABC Distributing, Inc.
9 and Pittsburg Wholesale Grocers, Inc.